

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Petition of SBC Communications, Inc For)	
Forbearance from the Application of Title II)	WC Docket No. 04-29
Common Carrier Regulation to IP Platform)	
Services		

**OPPOSITION OF THE ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its opposition to SBC Communications’ Petition for Forbearance in the above-referenced proceeding.¹ ALTS is the leading national trade association representing the interests of facilities-based competitive local exchange carriers (“CLECs”). ALTS member companies’ primary objective is to provide facilities-based competition in the telecommunications market, including voice, broadband and other advanced telecommunications services. ALTS urges the Commission to deny SBC’s petition as it is a blatant attempt to stifle competition for IP-enabled services as well as the underlying ILEC facilities and broadband services. Moreover, the Commission has initiated a rulemaking proceeding regarding IP-enabled services where the issues raised in SBC’s Petition would be more properly addressed.²

ALTS shares the Commission’s anticipation in witnessing the explosive growth of

¹ *Petition of SBC Communications, Inc For Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29 (filed Feb. 5, 2004) (“SBC Petition”).

² *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) (“NPRM”).

IP-enabled services in recent years.³ These services, like the many CLECs that provide them, offer the opportunity for reduced costs, improved innovation, strengthened network redundancy, and enhanced economic efficiency and growth.⁴ It is important for the Commission to continue promoting the provision of these services by competitive providers because consumers cannot rely upon the ILECs to readily expand this market.

In his book, *The Broadband Problem: Anatomy of a Market Failure and a Policy*

Dilemma, Charles H. Ferguson describes the ILECs' resistance to development of VOIP:

Until late 2003, no ILEC ever provided VOIP service of any kind, or any form of integration between VOIP and conventional ILEC voice services. In November 2003, eight years after commercial VOIP products were first introduced, the ILECs announced they would introduce VOIP products of their own in 2004. However, their products appear quite restricted, and the ILECs have not improved the price-performance characteristics of the underlying data services upon which VOIP services depend. It is overwhelmingly likely that the ILECs will in fact continue to resist the growth of VOIP.⁵

Many ALTS members currently provide IP-enabled services or plan to do so in the near future. Because of this, ALTS members have a keen interest in the outcome of proceedings regarding these services. While ALTS generally stresses light regulation of the IP-enabled services themselves, the underlying ILEC bottleneck facilities must still be regulated under Title II so that UNEs are available to competitive carriers providing telecommunications and broadband services. If the Commission determines that IP-enabled services should be exempt from certain public interest regulations under Title II, it must not consequently reduce or eliminate unbundling requirements for the underlying

³ *Id.* ¶ 5.

⁴ *Id.*

⁵ *The Broadband Problem: Anatomy of a Market Failure and a Policy Dilemma*, Charles H. Ferguson, at 69 (Bookings Institution 2004).

ILEC facilities. Rather, the Commission must ensure that CLECs maintain access to those UNEs at cost-based TELRIC rates.

In its NPRM, the Commission describes the current phenomenon as one where “communications migrate from networks relying on incumbent providers enjoying monopoly ownership of underlying transmission facilities to an environment relying on numerous competing applications traversing numerous competing platforms....” While ALTS certainly hopes to see that migration occur, the marketplace is no where near such a full-fledged migration at this point. In fact, IP-enabled applications require an underlying broadband platform to enable their full functionality. As the Commission noted in its *Pulver Order*, customers of pulver.com services had to “bring their own broadband” when accessing pulver.com services.⁶ In many cases, pulver.com services, like many other IP applications now available, traverse the monopoly-owned transmission facilities of the ILECs. The Commission must understand that although many companies have deployed their own IP networks to transit traffic, there is in no way reduced reliance on or need for competitive access to the underlying ILEC bottleneck facilities, particularly for broadband loops.

SBC suggests that competition in the marketplace has eliminated the need for any regulation of IP platform services.⁷ While regulation of retail IP-enabled services may not be necessary due to the proliferation of services and providers, the Commission must maintain strong enforcement of unbundling requirements under Title II if it wants to

⁶ In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45, *Memorandum Opinion and Order*, FCC 04-27, ¶ 9 (rel. Feb. 19, 2004) (“*Pulver Order*”).

⁷ SBC Petition at 5-7. In its Petition for Declaratory Ruling, SBC defines “IP Platform Services” as those services that enable any customer to send or receive communications in IP format over an IP platform. *Petition of SBC Communications, Inc For a Declaratory Ruling Regarding IP Platform Services*, WC Docket No. 04-36 (filed Feb. 5, 2004).

ensure that competition for those retail services continues. Competition for VOIP and other IP-enabled services is predicated on carriers continuing to have nondiscriminatory access to the underlying facilities to provide competitive broadband services. “The underlying structure and pricing of broadband data services dominated by the ILECs ... still represents a sharp limit on the usage of VOIP by most users. This suggests strongly that a truly competitive, technologically progressive broadband industry would result in dramatic declines in the cost and price of both local and long-distance telecommunications services.”⁸ In the absence of consumer choice for broadband services on which many IP-enabled services ride, ILECs that control bottleneck facilities could exercise a gate keeping role and deny consumers access to nascent technologies.

⁸ *The Broadband Problem: Anatomy of a Market Failure and a Policy Dilemma*, Charles H. Ferguson, at 129 (Bookings Institution 2004).

CONCLUSION

ALTS urges the Commission to deny SBC's petition as it is a blatant attempt to stifle competition for IP-enabled services as well as the underlying ILEC facilities and broadband services. While ALTS generally stresses light regulation of the IP-enabled services themselves, the underlying ILEC bottleneck facilities must still be regulated under Title II so that UNEs are available to competitive carriers providing telecommunications and broadband services.

Respectfully Submitted,

/s/

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